

Case Summary

Gregory Geyer appeals his four-year sentence for Class C felony forgery. We affirm.

Issues

Geyer raises several issues in this appeal, which we restate as:

- I. whether he had an opportunity to address any inaccuracies in his pre-sentence investigation report (“PSI”);
- II. whether the trial court abused its discretion in sentencing him; and
- III. whether his aggregate four-year sentence is appropriate in light of the nature of his offense and his character.

Facts

On October 1, 2007, the State charged Geyer with Class C felony forgery and Class D felony receiving stolen property. Geyer pled guilty to Class C felony forgery on May 29, 2008, and the State dismissed the remaining charge. The plea agreement provided that any executed portion of the sentence could not exceed two years. The probation department prepared and filed a PSI on June 12, 2008.

The trial court held a sentencing hearing on June 20, 2008. Geyer indicated to the trial court that he had seen and read the PSI and discussed it with his counsel. Counsel indicated that Geyer took “exception to the being classified as high risk. I tried to explain

to him how that works but other than that it's accurate." Tr. pp. 3-4. The trial court sentenced Geyer to four years, with two suspended to probation. This appeal followed.

Analysis

I. Opportunity to Contest the PSI

Geyer contends he did not have an adequate opportunity to address the trial court regarding any inaccuracies in his PSI. The purpose of a PSI is to provide a trial court with information to use for individualized sentencing. Dillard v. State, 827 N.E.2d 570, 576 (Ind. Ct. App. 2005). "[W]e are generally concerned only with insuring that the defendant had an opportunity to examine the report and challenge any inaccuracies contained therein, pursuant to I.C. § 35-38-1-12(b)." Id. Indiana Code Section 35-38-1-12 provides that "the court shall furnish the factual contents of the [PSI] or a copy of the [PSI] sufficiently in advance of sentencing so that the defendant will be afforded a fair opportunity to controvert the material included."

The record indicates that the PSI was furnished eight days prior to the sentencing hearing. Geyer admitted to the trial court that he had time to read the PSI and discuss it with his attorney. During his sentencing hearing Geyer had ample opportunity to address any concerns he had about the PSI with the trial court. In fact, counsel for Geyer pointed out that Geyer did not agree with the assessment that he was high risk, but stated "other than that, it's accurate." Tr. p. 4.

Prior to pronouncing the sentence, the trial court asked Geyer twice if there was anything else he would like to say. Geyer asked a question about the terms of house arrest, confirmed that he had a two year cap on the executed sentence, and finally

answered that he had nothing else to say. During these exchanges, Geyer did not respond with any concerns about the PSI. Given his lack of objection to the PSI, we could consider these arguments waived, but will address the issue nonetheless. See Dillard, 827 N.E.2d at 576 (explaining that “this court has consistently held that, having been afforded the opportunity to review the report, if the defendant fails to register an objection to information contained therein, any such objection is waived for appellate review.”).

Even on appeal, Geyer does not point to any specific facts in the PSI that are inaccurate. His concern on appeal primarily seems to be that he was wrongly classified as “high risk” but he does not link this classification to any inaccuracy in the reported criminal history. “The defendant generally has the onus of pointing out any factual inaccuracies in the pre-sentence report.” Carter v. State, 711 N.E.2d 835, 840 (Ind. 1999). Geyer seems to contend that his right to controvert the PSI is personal and his counsel could not do it for him.¹ Indiana law does not support such a proposition. We conclude Geyer was given an adequate opportunity to address any inaccuracies in his PSI during the sentencing hearing.

II. Abuse of Discretion

Geyer argues that the trial court abused its discretion in sentencing him. In reviewing a sentence imposed under the current advisory scheme, we engage in a four-step process. Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007). First, a trial court

¹ Geyer argues that contesting his PSI is analogous to a defendant exercising his right to waive a jury trial, which cannot be the function of a defendant’s attorney. Geyer cites Zakhi v. State, 560 N.E.2d 683, 684 (Ind. Ct. App. 1990), a case about waiving one’s right to a jury trial, in support of his position. This case is not analogous and no Indiana case has held a defendant’s contest of a PSI rises to such a level of a personal, constitutional right.

must issue a sentencing statement that includes “reasonably detailed reasons or circumstances for imposing a particular sentence.” Id. Second, the reasons or omission of reasons given for choosing a sentence are reviewable on appeal only for an abuse of discretion. Id. Third, the weight given to those reasons—the aggravators and mitigators—is not subject to appellate review. Id. Fourth, the merits of a particular sentence are reviewable on appeal for appropriateness under Indiana Appellate Rule 7(B). Id.

The trial court entered a detailed oral sentencing statement. It outlined the aggravating factors it found—that Geyer had a criminal history, that past attempts at rehabilitation failed, and that he was a multi-state offender. The trial court found that Geyer’s plea of guilty and acceptance of responsibility were mitigating factors and that the aggravators and mitigators balanced. It then imposed the advisory sentence of four years, with only two executed in line with the plea agreement. See I.C. § 38-50-2-6(a).

The trial court learned Geyer’s criminal history from the information in the PSI. Geyer contends that because he was not given an adequate opportunity to contest the PSI, the trial court abused its discretion in considering such information. We have already concluded that Geyer had an adequate opportunity to contest his PSI. Geyer introduced no facts during the sentencing or on appeal that the trial court’s recitation of his criminal history was inaccurate. Therefore, the trial court did not abuse its discretion in considering Geyer’s criminal history as an aggravating factor. To the extent that Geyer seems to argue the trial court afforded too much weight to his criminal history, we do not

reweigh the aggravators and mitigators on appeal. See Anglemyer, 868 N.E.2d at 491. The trial court did not abuse its discretion in sentencing Geyer.

III. Appropriateness

Geyer argues that his four-year aggregate sentence is inappropriate in light of the nature of the offense and his character. See Ind. Appellate Rule 7(B). Although Indiana Appellate Rule 7(B) does not require us to be “extremely” deferential to a trial court’s sentencing decision, we still must give due consideration to that decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. “Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate.” Id.

Geyer contends a more appropriate sentence would be only two years executed without the additional two years on probation. However, “the question under Appellate Rule 7(B) is not whether another sentence is more appropriate; rather, the question is whether the sentence imposed is inappropriate. King v. State, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008). The advisory sentence for a Class C felony is four years, which Geyer received, with two years suspended to probation in line with his plea agreement. See I.C. § 38-50-2-6(a).

Regarding his character, Geyer again argues that his sentence is inappropriate because his “alleged prior criminal history” was improperly considered. Appellant’s Br. p. 9. Yet, Geyer presented no evidence at trial or on appeal to refute his criminal history as outlined in the PSI or as recited by the trial court. Geyer’s record includes eight

misdemeanor and two felony convictions. Geyer has failed probation in the past and has an extensive history of substance abuse. He committed offenses in Indiana, Michigan, and Ohio. Even considering the guilty plea and acceptance of responsibility, those factors do not overcome Geyer's criminal history to reflect positively on his character. We should note that the State also dismissed one of the charges against Geyer pursuant to his plea agreement. Geyer's character does not warrant a reconsideration of his advisory sentence.

“[A] revision of a sentence under Indiana Appellate Rule 7(B) requires the appellant to demonstrate that his sentence is inappropriate in light of both the nature of his offenses and his character.” Williams v. State, 891 N.E.2d 621, 633 (Ind. Ct. App. 2008). Although the nature of this crime, forgery of a personal check, is not particularly egregious, Geyer's character does not necessitate a reduction to the sentence. We conclude his four-year sentence is appropriate.

Conclusion

Geyer received an adequate opportunity to address any inaccuracies in his PSI during the sentencing hearing. The trial court did not abuse its discretion in sentencing him. The advisory four-year sentence, with two years suspended to probation, is appropriate. We affirm.

Affirmed.

BAILEY, J., and MATHIAS, J., concur.